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## THE WEST VIRGINIA DEBT SETTLEMENT.

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BY HON. ROSEWELL PAGE, SECOND AUDITOR OF VIRGINIA.

My acquaintance with the subject discussed is due to daily contact with the records, and to association with those whose work has been largely connected with it. In the domain of surmise or speculation I only claim what I concede to all others, the right to an opinion. The authorities used are: the records in the Second Auditor's office; the records in the case of *Va. vs. W. Va.*; the arguments of counsel; the reports that have been published; the statutes of the State; the decisions of the courts; and the historical and political writings on the subject.

### *The History of the West Virginia Debt.*

I. When the western counties of the state of Virginia opposed secession at the opening of the Civil War, the debt of Virginia was \$33,897,073.82, though finally reduced by agreement between Virginia and the creditors to \$30,563,861.56. (*Va. vs. West Va.*, U. S. Reports, Vol. 238, Page 204.)

Ia. A convention was called at Wheeling after Virginia had seceded from the Union, calling itself the "Restored State of Virginia," and on August 20th, 1861, adopted an ordinance declaring it to be the sense of the convention that a new state should be formed out of a portion of the territory of Virginia, specifying the counties contained therein. The ordinance, at section 9, contained the following provisions:

"The new state shall take upon itself a just proportion of the debt of the Commonwealth of Virginia, prior to January 1st, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the expenses of the state government since any part of said debt was contracted, and deducting therefrom the moneys paid in the Treasury of the Commonwealth from the counties within said new state during said period, etc."

Ib. The convention assembled in Wheeling on November 26th, 1861, prepared the constitution for the state of West Virginia, and, in the 8th clause and 8th article, provided that "An equitable proportion of the public debt of the Commonwealth of Virginia prior to January 1st, 1861, shall be assumed by the state, and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accrued interest and redeem the principal within 34 years.

Ic. On the 3rd day of May, 1862, the constitution was submitted to the people composing the new state of West Virginia for ratification and was duly reported as ratified by a majority of the voters at the polls.

Id. On the 31st day of December, 1862, the act was passed by Congress which created the state of West Virginia. The debates in Congress show that possibly West Virginia would not have been admitted as a state but for her promise to bear a just proportion of the debt of the old state. In a debate on the subject the question was asked: "What will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?" and the answer was made by Mr. Hutchins: "Here is a provision of the constitution of West Virginia in reference to that matter: an equitable proportion of the debt of Virginia prior to January 1, 1861, shall be assumed by this state and the Legislature shall ascertain the same as soon as practicable."

Another question was asked by Mr. Crittenden: "How is the debt to be divided?" To which there was answered, "The constitution framed by the convention of the people of the proposed new state, to pay its just proportion of the debt owed by Virginia prior to the Ordinance of Secession," to which Mr. Crittenden replied: "The gentlemen tells us there is provision made for it in the constitution and I am satisfied with that. As it has been attended to, I have no more to say about it." (See Mr. Harrison's brief quoting record.

Ie. "The Restored State of Virginia" by its General Assembly on February 3rd, 1863, passed an act with reference to all property within the boundaries of the proposed state of West

Virginia, and provided that the state of West Virginia shall duly account for the same" (payment made on account of such territory to become West Virginia) in settlement to be hereafter made with this state, provided, etc." The next day the General Assembly appropriated "\$150,000 to the state of West Virginia, etc., when the same shall have been formed, organized and admitted as one of the states of the United States." And also all balances, etc., and the Auditor of Virginia was required to make a statement of moneys expended in such counties, etc.

If. Pursuant to the act of Congress cited above (*Id.*), Mr. Lincoln issued his proclamation April 20th, 1863, and West Virginia was admitted as a state into the Union June 20th, 1863.

Ig. The provision of the constitution of the United States requiring the consent of a state to the formation of another state out of its territory had been met by an act of the Legislature of the "Restored State of Virginia" on the 13th of May, 1862, giving the consent of Virginia to the erection of the proposed new state within the limits of Virginia.

Ih. On March 6, 1871, the Supreme Court of the United States decided against the present state of Virginia a suit brought by her against West Virginia to test the question whether or not Berkeley and Jefferson counties constituted a part of the state of West Virginia. It was claimed by West Virginia that such action on the part of Virginia had perverted the settlement which West Virginia might have made in accordance with the Wheeling Ordinance, and as recommended by the Governor of West Virginia in his message to the Legislature of 1866. (Messages of Governor of West Virginia in 1868 and 1869, as well as his message of 1867 calling attention to the fact that Virginia had appointed delegates to confer with reference to securing a reunion of the two states, and secondly for the purpose of adjusting the public debt and for a fair division of the public property. Also see action of Legislature of West Virginia by resolution of February 28th, 1867, declaring the people opposed to reunion with Virginia, but directing the Governor as soon as the above mentioned suit was settled to appoint three Commissioners to treat with the Commissioners of Virginia upon the matter of adjusting the public

debt as provided in the ordinance of 1861, and the constitution of West Virginia, assembled in November, 1861."

Ii. On the 20th of February, 1871, the Legislature of Virginia, through the Governor, tendered to West Virginia a proposition to arbitrate the abitrators, two for each State not to be citizens from either state, the arbitrators to select an umpire if necessary. The proposal was submitted to West Virginia, but the Legislature of West Virginia a few days prior to such communication (Feb. 15th, 1871) had passed a resolution authorizing the Governor of West Virginia to appoint three disinterested citizens of the state to treat with the authorities of Virginia upon the subject of the adjustment of the public debt of the state existing prior to January 1, 1861, etc., and upon investments held by the state of Virginia. There was provided compensation for the Commissioners, and provision made for the employment of an accountant or clerk. The proposal of the Government of Virginia was rejected because the approval of both Legislatures was necessary, and because citizen Commissioners would be necessarily more familiar with the circumstances as to the creation of the debt, and the germane questions. But West Virginia invited Virginia to appoint three disinterested citizens of the state as Commissioners to act with West Virginia Commissioners, and agreed to their report being subject to ratification by the Legislatures of the two states.

The Governor of West Virginia appointed three Commissioners who came to Richmond where all the accounts and vouchers and evidence were. They addressed a communication to the Second Auditor of the Commonwealth asking specific information.

The reply of the Second Auditor of Virginia was as follows:

Second Auditor's Office.

Richmond, Nov. 16, 1871.

A. W. Campbell, Esq., Secretary, etc.

Dear Sir:

Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it and

the financial affairs of the state, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive, or the General Assembly of Virginia, for detailed reports of all matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,

Most respectfully yours,

Asa Rogers."

West Virginia claimed that Virginia failed to co-operate with her Commissioners, and placed them at a disadvantage in examining the records at Richmond, and that only an imperfect report could be made by the state of West Virginia. For these reasons and because the Commissioners disregarded the provisions of the ordinance of the Wheeling Convention of August 20th, 1861, it was claimed that West Virginia failed to make terms with Virginia. But it was also claimed that the Senate of West Virginia, through its Finance Committee, of which J. M. Bennett, who had been Auditor of Virginia for eight years, was Chairman, had been considering the question.

The Committee made its report December 22, 1873, from which it appeared that West Virginia did not owe Virginia anything, but that Virginia owed West Virginia on the 1st of January, 1861, \$512,000, not including interest.

## *II. The Funding of the Interest by Virginia.*

IIa. Virginia by her Legislature on March 2, 1866 (Acts 1866-7, Chapter 9) passed an act providing for the funding of the interest upon the public debt left unpaid since the date of

secession of the state, April 17, 1861. Such interest to be invested in coupon or registered bonds which were to bear the same rate of interest as the principal of the bonds bore. The new bonds to bear the date January 1, 1866, and were payable any time the holder might elect, not less than ten nor more than thirty-four years from date. The first payment of interest was not to be made until July 1, 1867.

The act also authorized the funding of interest upon bonds issued by "The Restored Government of Virginia" since the creation of the state of West Virginia.

I**ib.** Virginia by her Legislature, by act of March 21st, 1867 (Acts 1866-67, Chapter 35) after reciting the immense loss of property sustained by the state in the war, and that it was found impossible to pay full interest on the public debt and reciting the desire and purpose of the General Assembly to make provision for paying the same as fully as the resources of the state will warrant, provided that there should be paid on July 1st, 1867, and January 1st, 1868, two per cent interest upon the principal of the public debt, excluding therefrom the bonds given for interest on said debt under act of March 2nd, 1866, above mentioned. The act recites that such interest was what Virginia feels obliged to pay until settlement of the accounts between the two states.

The report of the Second Auditor, December 21st, 1870,	
shows "The public debt issued under the act of March	
2, 1866, authorizing the interest to be funded".....	\$7,063,950.77
And the "Unfunded interest due January 1, 1867, fund-	
able in bonds of that date.....	628,359.61

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Amount of interest funded and that may be funded... \$7,692,310.38

The report for the next year of the Second	
Auditor (December 1, 1871) shows the	
amount funded under said act of March	
2nd, 1866 .....	\$6,576,913.60
And that the "Unfunded interest due Jan-	
uary 1st, 1867, fundable in bonds under	
act of March 30, 1871" was.....	582,761.79

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\$7,159,675.39

*III. West Virginia Certificates, Also Called Virginia Deferred.*

IIIa. Virginia, by act of March 30th, 1871, (Acts of 1870-1, p. 378) passed what was called the "Consol Act," in which two-thirds of the debt, principal and interest was consolidated and funded as of July 1, 1871, in six per cent coupon or registered bonds payable in 34 years, except that five per cent bonds should be funded at five per cent. For the other third of the amount due upon the old debt, surrendered, there was issued a certificate bearing the same date as the new bonds, setting forth the amount, and that payment thereof with interest at the rate prescribed in the bond, surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the state at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded in trust for the holders or their assignees.

The old bonds were to be delivered to the Second Auditor of Virginia who was to make the calculations which were to be endorsed, dated and signed by him on the back, and a registry kept in his office. The new certificates were to be signed by the Treasurer and Second Auditor and delivered to the person entitled thereto. The Treasurer was to cancel and hold the old bonds, due registry being made in his office.

IIIb. Virginia, under the funding acts of March 28th, 1879, known as the "McCullough Bill" and the "Ten Forty Act," under the funding act of February 14th, 1892, known as the "Riddleberger Act," and under the funding act of February 20th, 1892, known as the "Century Act," provided for the West Virginia certificates being issued on the old debt funded under such several acts.

IIIc. At the time of the Century settlement, confirmed by the passage of the Century Act, there was evidently a discussion of the West Virginia certificates between those making the settlement, and while nothing of it appears in any records, the fact that a finality was to be given to the vexed question of Virginia's debt would naturally suggest the ending of the West Virginia controversy; and the further fact of the act next men-



tioned having been passed so speedily would appear to justify the opinion that such idea was in the minds of those making the Century settlement.

*IV. The Preparation for Legal Procedure.*

IVa. Virginia, by act of March 6th, 1894 (Acts 1893-4, p. 867) provided by joint resolution for the adjusting with West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia and for the application of whatever may be received from West Virginia to the payment of those entitled to the same.

This act, after severally referring to the funding and settlement of her public debt under the four acts of March 3, 1871, March 28, 1879, February 14, 1882, and February 20th, 1892, and reciting the fact that Virginia had settled and adjusted to the entire satisfaction of her people and creditors the liability assumed by her on account of two-thirds of the debt of the original state, created a Commission of seven members to consist of the Chairman of the Senate and House Committee on Finance, respectively, and five others, two from the Senate and two from the House of Delegates to be chosen by such Senate and House, and one resident of the state to be appointed by the Governor. The Commission to choose its own Chairman and Secretary. Vacancies during recess of the Legislature to be filled by the Governor on notification thereof by the Chairman.

The Commission was authorized and directed to negotiate with the state of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia until satisfactory assurances were given by the holders of a majority of the amount of certificates, exclusive of those held by the Board of Education and Sinking Fund Commissioners of their desire that the Commissioners should so undertake, and of their willingness to accept the amount ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia, which has not been assumed by the present state of Virginia. This act further provided that negotiations should not be undertaken by the Commission—except

upon the basis of Virginia being liable only for the two-thirds already provided for as her equitable proportion thereof. All expenses incurred by the Commission and the Board of Arbitration including reasonable compensation of the members thereof to be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account.

The action of the Commission to be subject to the approval or disapproval of the General Assembly, and not to be binding on the state until approved by the General Assembly.

The Governor was requested to communicate the joint resolution to the Governor and General Assembly of West Virginia.

IVb. The following Virginia Commission was duly appointed in accordance with the joint resolution: Messrs Taylor Berry, H. T. Wickham, and H. D. Flood from the Senate; *Messrs.* John B. Moon, H. H. Downing and Randolph Harrison from the House; and Mr. William F. Rhea by Governor Charles T. O'Ferrall. The Commission was duly organized with Mr. John B. Moon as Chairman.

In the Commission thus appointed, between the date of such appointment and the first of April, 1919, when the West Virginia act was passed settling the debt, there have been the following changes due to death of its members:

In the place of Mr. Taylor Berry, Judge John Thompson Brown, of Nelson Co.

In the place of Mr. John B. Moon, Mr. D. H. Pitts, of Albemarle Co.

In the place of Mr. H. H. Downing, Mr. H. H. Downing, Jr., of Port Royal.

IVc. On the 7th of January 1895, Governor O'Farrell communicated the joint resolution to the Governor of West Virginia by whom it was laid before the Legislature of that state. No Committee was appointed by that Legislature to meet the Virginia Commission, nor was any action taken, or response made by them on behalf of that state. (See report of Virginia Commission, House Journal and Documents 1895-6, H. Doc. No. 4.)

The report showed that the West Virginia Legislature assumed that no negotiation could be had except upon the basis of West Virginia's paying one-third of the original debt and that, although this assumption had been relieved by a communication stating that the Virginia commission was ready to treat upon any just and equitable basis, or if desired would make the adjustment upon the basis of the Wheeling Ordinance passed August 20th, 1861, no response was made, save the formal acknowledgment of its receipt by the President of the Senate, and the statement that it had been laid before the Senate.

The report contained the further statement that the traveling expenses of the Commission, and the expenses of the clerical work done for them had been borne by the Certificate Holders' Committee. It also reports the death of Mr. Taylor Berry, of Amherst County, a member of the Commission who had died within the month. The report is signed John B. Moon, H. T. Wickham, H. D. Flood, Randolph Harrison, H. H. Downing, and W. F. Rhea, with Jos. Button, Secretary.

IVd. The agreement of July 28th, 1898, was made between the *Committee* which then consisted of John Crosby Brown, George Cappel, J. Kennedy Tod, Clarence Cary, and *holders of* the West Virginia certificates who should deposit the same as provided. It recites Virginia's action in requiring a guarantee that all certificates shall be promptly surrendered in exchange for whatever West Virginia agrees to pay, and the creditors of West Virginia may agree to receive. It then constituted as an *Advisory Board*: Thomas F. Bayard, W. Pinkney Whyte, Edward J. Phelps and George G. Williams.

The functions of the *Advisory Board* were to examine the plan of settlement proposed by the *Committee* representing the holders of the certificates submitted to them, and to state their recommendations thereof, or the contrary. The *Advisory Board* to add to their number, and to fill vacancies.

The function of the Committee was to bring about a deposit of certificates or of trust receipts heretofore issued to represent them; to formulate a plan of settlement and after it was recommended by the *Advisory Board* to cause the same to be pub-

lished and submitted to depositing creditors for their acceptance; to act as agents for the depositing creditors in carrying out the purposes of the agreement; to appoint one or more depositories to receive said certificates or trust receipts and issue therefor its proper receipt—subject to restriction in this contract; the Committee to have power to make arrangements with either Virginia or West Virginia to insure the prompt surrender of all or any of the certificates in exchange for such amount as West Virginia may pay, and her creditors agree to accept, and also includes power to execute in behalf of the depositing creditors any release or acquittance which will exclude any demand on Virginia beyond the amount she may receive from West Virginia; provided that no settlement should be concluded until it has been recommended by the *Advisory Board*, and has been submitted to the creditors and accepted as follows:

(1) When *Advisory Board* had recommended plan of settlement, the *Committee* before proposing it to the state, should advertise the same in two New York and London newspapers that a plan of settlement had been formulated, and notifying parties where in such cities it was obtainable without cost.

(2) Holders of a majority of the face value of deposited certificates to notify committee in writing either directly or through the depository of their unwillingness to accept the proposed settlement, otherwise proposed plan assumed to be satisfactory to a majority and to have been accepted by all depositing creditors, and the plan should be offered to the states or either of them.

(3) When plan of settlement became effective (of which fact the declaration in writing of the *Committee* to the several depositories should be conclusive) each depository should, in the manner directed, by the *Committee*, surrender to either state as might be necessary, any or all of the certificates deposited with it, and receive in exchange therefor the amount or kind of securities called for by the plan of settlement.

The amount so received in settlement to be immediately delivered to depositing creditors in accordance with terms of settlement. The *Committee* was given power to arrange for the purchase and sale of fractional interest necessary to equalize distribution.

(4) Depositors upon receiving new bonds in settlement to pay to depository for *Committee* such commission as *Committee* might assess for charges, and expenses of the settlement including compensation of the *Committee*, Counsel and *Advisory Board*, but such assessment should in no event exceed five per cent in cash on the par of any certificate deposited under this agreement.

If the *Committee* decided that a settlement satisfactory to the holders could not be promptly effected, a notice was to be published requiring holders to pay as much of twenty cents on the one hundred dollars of certificates as might be necessary to reimburse the expenses actually incurred by the *Committee*. Certificate to be sold if such assessment not paid in six months after notice published in New York and London newspapers twice a week for three consecutive weeks, and proceeds after paying the assessment to be held for the holder of its corresponding receipt.

Any certificate might be withdrawn from deposit after October 1, 1902, upon its paying its pro rata expenses not to exceed twenty cents per hundred dollars of certificates, unless a settlement was previously arranged, or unless an arrangement was made with Virginia for obtaining a settlement with West Virginia.

(5) The *Committee* to have power to add to its number and to fill any vacancy. By unanimous consent of the *Committee* any member may act by proxy.

IVe. On the 7th day of February, 1900, the *Commission* made a report to the General Assembly of Virginia showing that the control and disposal of a majority of said certificates had been tendered by a *Committee* of which John Crosby Brown of New York was Chairman, and the *Committee* offered to accept whatever might be realized from West Virginia on the certificates in full settlement of their claims, and showing that Brown Brothers & Company, Bankers of New York, was the Depository of said *Committee*. (See Journal & Documents 1899-1900, Sen. Doc. No. 6.)

IVf. The act of March 6th, 1900 (Acts 1899-1900, p. 902), provided for the settlement with West Virginia of the propor-

tion of the public debt of the original state of Virginia, proper, to be borne by West Virginia and for the due protection of the Commonwealth.

It recited the various funding acts of 1871, 1879, 1882, 1892, and the constitution of Virginia, with reference to adjustment of West Virginia's proportion of the debt of the original state of Virginia and further recited the fact that Virginia had satisfactorily settled the two-thirds of the original debt which she assumed. It then authorized the *Commission*, appointed by the joint resolution of March 6th, 1894, to receive and take upon deposit the certificates (West Virginia certificates) or to have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said *Commission* will secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

The act further provided that when at least two-thirds in amount of the said certificates issued under the act of 1871, exclusive of those held by the state for the Literary Fund and the Sinking Fund and at least a majority in amount of all the other certificates aforesaid shall be deposited or placed subject to the control of the said *Commission* upon agreement and contract aforesaid, the *Commission* was authorized and empowered by and with the advice and approval of the Attorney General of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of the said *Commission* and Attorney-General be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subject to any expense on that account.

IVg. On September 18, 1902, the Virginia Commission and the Certificate holders' Committee, of which John Crosby Brown was Chairman, called hereafter, respectively, the *Commission* and the *Committee*, entered into a contract which was to con-

tinue in force for three years subject to renewal or extension by the parties, etc. This contract was approved by Attorney-General William A. Anderson on September 29, 1902. The *Commission* was given control of West Virginia certificates and agreed to take action deemed needful, and the *Committee* agreed that the amount realized thereon should be accepted in full satisfaction of all claims of the certificate holders, and the *Committee* agreed to **surrender** to the *Commission* such certificates, so deposited, in **exchange** for amount received.

IVh. On December 3, 1902, a plan of settlement, including the terms of the September 2, 1902 contract, was agreed upon by the *Advisory Board*—G. C. Williams, Wm. Pinkney Whyte, Wayne MacVeigh and Lyman J. Gage—and adopted with the right of the *Committee* to make further contracts with the *Commission* as might be deemed needful to bring about a settlement with West Virginia under the joint resolution and act of the Virginia Legislature. The *Committee* was authorized to dispose of certificates so as to carry into effect any settlement made with the *Commission* or otherwise, for the payment of expenses now or hereafter incurred, whether settlement is effected or not. The amount realized, or the proceeds of such settlement, after deducting proper charges under agreement of July 28, 1898, to be apportioned and distributed among the different certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by tribunal to be constituted of one member by the *Committee*, one member of the *Advisory Board* and the third by the two thus appointed. And if the tribunal so appointed deemed it impracticable to distribute in kind and bonds or securities received in any such settlement, the same may be sold and converted into money for the purpose of such distribution, a vacancy occurring in the tribunal to be filled by the remaining members.

IVi. In January 1903, there was published in the New York and London papers notices to the depositors of "West Virginia Deferred Certificates" under the agreement of deposit dated July 28th, 1898, stating that a plan of settlement of the public debt of West Virginia had been formulated and approved by

the *Advisory Board*, appointed under such agreement, and giving notice to all parties in interest that the plan could be obtained without cost at the office of Messrs. Brown Brothers, 59 Wall Street, New York; and at Brown Shipley & Co., Founders Court, London. These notices are signed John Crosby Brown, Chairman; Clarence Cary, J. Kennedy Tod, Bartlett Johnston, Virginius Newton, R. P. Chew, *Committee*; and Robert L. Harrison, Secretary.

IVj. On December 13, 1904, John Crosby Brown, Chairman, and Robert L. Harrison, Secretary, certified that under the agreement of July 28th, 1898, between the *Committee* and the holders of deposited certificates of indebtedness or securities known as Virginia Deferred Certificates, the certain plan of settlement made and approved by the *Committee* and *Advisory Board* December 3, 1902, became effective by such approval, and by due publication of such plan under terms of such agreement and further by reason of the absence of any notification in writing or otherwise from or on part of the holders of any of the deposited certificates, for more than thirty days after said publications of any unwillingness to accept such proposed settlement. On December 14th, the agreement was made between the *Committee* and *Commission*, and Brown Brothers directed to issue a certificate that the Virginia Deferred Certificates were deposited in all respects subject to the control and disposition of the Virginia *Commission* in pursuance of the Virginia act.

IVk. On the 25th day of January, 1905, a subcommittee of the Commission consisting of Messrs. Randolph Harrison, H. H. Downing, H. D. Flood and John B. Moon addressed to the Governor of West Virginia, Hon. A. D. White, the statement of Virginia's position, which statement was duly endorsed as approved by William A. Anderson, Attorney-General.

This statement contained the facts as heretofore detailed, and declared that exclusive of the certificates held by the Literary Fund and Sinking Fund of Virginia, there had been deposited in the name of the *Commission*, and subject to their control and disposal \$12,910,555.89 more than two-thirds of those of



1871 and a large majority of all the others, so that the *Commission* was now authorized and empowered to make a settlement and adjustment with West Virginia as provided in the Act of March 6, 1900. They declared that they were a subcommittee appointed by the meeting at Richmond, December 14th, 1904, who with the Attorney-General of Virginia were authorized to invite the attention of the Governor of West Virginia to the unsettled matters between the two states, and endeavor to negotiate a settlement on some equitable basis to be agreed upon by the authorities of the two states. The statement asserted that by the formation of West Virginia the original state was deprived of more than one third of its white population, and one third of its territory, that the portion of territory so embraced, by reason of its mineral wealth, has since proved the most valuable and productive part of the original state. The statement showed that the debt of the original state at the time of its dismemberment amounted to more than \$30,000,000, of which West Virginia had borne no part, nor had any adjustment of it ever been made.

They asked that some action be taken by the Legislature of West Virginia for the purpose of entering into negotiations with the sub-committee for a settlement on some equitable basis, either by the appointment of a committee to conduct such negotiations on behalf of West Virginia, or by such other action as the Legislature might deem appropriate. The statement was accompanied by a copy of the Virginia act of March 6, 1900.

IVI. Two days later—January 27, 1905,—Governor White of West Virginia laid the matter before the Senate in two short paragraphs, in which he said oral statements had been made, and accompanying papers had duly been presented to him for transmission to the Legislature of West Virginia by a sub-committee representing the state of Virginia consisting of Hon. Randolph Harrison, Chairman; Colonel Button, Secretary; and Hon. William A. Anderson, Attorney-General of that State.

IVm. On February 1st, 1905, Hon. Randolph Harrison made an address before the Finance Committee of the two Houses of the West Virginia Legislature, the sub-committee of the

*Commission* having been invited by such Finance Committees to give the reasons for Virginia's action in inviting West Virginia's attention to the subject.

Few clearer statements have ever been made by a great lawyer. And it is impossible to see how any body of intelligent men could have failed to be convinced by it; but so far from it was the West Virginia Legislature, that they refused to treat upon the subject.

This perhaps was expected as for years West Virginia had published to the world that she did not owe any public debt.

IVn. On September 9th, 1905, the agreement of December 14th, 1904 was extended with the approval of the Chairman of the *Committee* and the *Commission*, and with the approval of Hon. William A. Anderson, Attorney General.

IvO. On November 24th, 1905, the *Committee* and *Commission* executed a contract between them, signed by John Crosby Brown—Chairman, R. P. Chew, Wm. C. Legendre, Clarence Cary, J. Kennedy Tod, Geo. F. Baker, Barlett Johnson, John B. Moon—Chairman, Wm. F. Rhea, H. D. Flood, H. H. Downing, H. T. Wickham, Randolph Harrison, and J. Thompson Brown, and attested by Jos. Button and Robt. L. Harrison as Secretaries. This contract was also duly signed by William A. Anderson, Attorney-General, and recited that it was entered into by and with his approval.

This contract, after reciting that the action of West Virginia in its authorities' absolute refusal to treat the subject at all, had left the Virginia Commission and Attorney-General no possible means of bringing about a settlement which they were charged with making, without resort to the Court having jurisdiction of controversies between states, stipulated that the former contract between the parties should continue in force as if no limit had been fixed thereto; and that the certificates given by Brown Bros., the depository to the Virginia's Commission should not be deemed limited in any way, but that the Commission was given full and complete control and right to dispose of all deferred certificates now or hereafter embraced in the receipts and certificates of Brown Brothers and Company.

The contract further stipulated that the Virginia Commission by and with the advice of the Attorney-General deemed it needful and proper in order to protect the interest of the state, and bring about and carry into effect a settlement in the premises that a suit should be brought in the name of Virginia against the state of West Virginia in the Supreme Court of the United States, asking for adjudication and settlement by that Court of the matter unsettled and undetermined between the two states arising out of the debt of the original state of Virginia before its dismemberment. And the *Commission* by and with the advice and approval of the Attorney-General undertook and agreed that suit should be brought against the state of West Virginia for the purpose of obtaining a settlement, as soon as the pleading and papers and documents could be conveniently and properly drawn up and prepared for presentation to the said Court; and that the suit should be instituted and conducted in all respects in accordance with the provisions of the acts and resolutions of the General Assembly. But power to make and carry into effect a settlement and adjustment in the premises, by agreement with West Virginia as to the deferred certificates placed subject to the control of the *Commission*, shall remain vested in said commission notwithstanding the institution and pendency of the suit.

The *Commission* agreed to account for and pay over and deliver such amount, either in Cash or Securities, as may be realized from West Virginia through any settlement made by said *Commission* with that state either by means of adjudication or recovery in said suit or otherwise, in full settlement of all claims under said certificates.

The *Committee* agreed on behalf of the depositors to accept such amount in Cash or Securities as may be determined in the said suit to be due or as may be realized through any settlement from the state of West Virginia in full settlement and satisfaction of all claims, on account of said certificates, and on account of the bonds therein mentioned, and to accept as discharge and acquittance of all claims in the premises against the state of Virginia, such adjudication against the state of West Virginia.

*V. The Suit.*

The suit was duly brought, and was conducted with ability worthy of the litigants and the court. Conrad, Carlyle, Spooner and John G. Johnson now among the dead took part, as did Sanford Robinson. It is not invidious to mention Randolph Harrison and William A. Anderson especially, among counsel who have been with the case from the beginning, and seen its completion. Each Attorney-General since the suit was brought has in turn taken part officially—Williams, Pollard, Hank and Saunders, the last named being fortunate to be in at the end, and the state fortunate in having him.

John H. Holt was perhaps West Virginia's Ajax Telamon. With him were Mr. Charles E. Hogg and other able lawyers including her Attorney-Generals.

I wish there were time to speak more fully of Charles E. Littlefield, the Master,—a big hearted, big brained American lawyer from Maine. I have had him at my home and been to his New York home, and can speak of him from long acquaintance and from an examination of his work in this case, as a notable factor in its settlement.

The first Decision on the merits was on March 6th, 1911, reported in 220 U. S. 1. Holmes J. determined that the debt amounted to \$30,563,861.56 as of January 1st, 1861, to be apportioned according to estimated value of the real and personal property of the two states at the time of separation—June 20th, 1863, and that excluding slaves West Virginia's share for 23.5 per cent, making the principal of the debt \$7,182,507.46.

The question of interest was left open to afford opportunity for conference and adjustment. This was done out of the consideration due to the character of the parties, and because this was "a quasi-international difference referred to the Court in reliance upon honor and constitutional obligations of the states concerned.

Commissioners were appointed by West Virginia to consider the question with Commissioners appointed by Virginia. Their efforts were unavailing and the matter went back into Court which referred the matter again to the Master to report upon the question of interest as well as upon the claim of West Vir-

ginia to an interest in the assets charged as held by the original state—West Virginia being allowed to file a supplemental answer asserting the existence of credits, which were claimed as against the portion of principal assumed, and alleging reasons why she should not be charged with interest.

Motions had been made regularly by Virginia to have the Court proceed to final decree (222 U. S. 17). Such motions were declined in the light of public reasons for granting further time and the cause was assigned for final hearing April 1914 (231 U. S. 89).

The subject matter of the supplemental answer of West Virginia was referred to Charles E. Littlefield, the Master who had made the former report, who, along with the evidence and his conclusion therefrom, was to report a statement of his views concerning the operation and effect of the proof thus offered, if any found, upon the principal sum to be due by the previous decree (234 U. S. 117).

The Master took evidence and heard argument, and reported that various assets claimed as credits were presented for the first time, and that, so far as these items had been referred to in the earlier proceedings, it was for an entirely different purpose in the main. He reported that the value of the assets applicable to the public debt amounted to \$14,511,945.74, of which West Virginia's share—23½ per cent as of January 1st, 1861—would be \$3,410,307.25; and that if this amount was credited to West Virginia in reduction of her liability, there should be offset certain moneys and stocks received by her from the Restored Government of Virginia, aggregating \$541,467.76, leaving a net credit to West Virginia of \$2,868,839.49, which would reduce West Virginia's liability for principal from \$7,182,507.46 to \$4,313,667.97.

The allowance of certain credits of moneys and securities was made because they had been specifically dedicated to the payment of the public debt. The money embraced Cash in the Sinking Fund as of January 1st, 1861, and the securities purchased with the proceeds of the debt. In which event West Virginia was held entitled to have these assets taken into account in fixing the amount of her liability. As West Virginia

was to bear  $23\frac{1}{2}$  per cent of the debt as it existed on January 1st, 1861, she should be credited with a similar part of the fund fairly valued, which had been pledged for its discharge.

Vb. Mr. Justice Hughes rendered the opinion of the Court on the 14th of June, 1915, 238 U. S. 208—the second opinion on the merits.

The Master had reported the \$14,511,945.74 of assets applicable to the public debt were:

Cash in Sinking Fund.....	\$ 819,250.03
Stock in R. F. & P. Railroad.....	323,167.36
Other Stock Loans, etc.....	7,352,594.65
Interest and Dividends prior to Jan. 1, 1861.....	345,554.80
Bank Stock .....	3,802,357.48
Stock sold A. M. & O. Railroad.....	204,688.42
Stock in James River & Kanawha Canal Company....	1,664,333.00
	<hr/>
	\$14,511,945.74

The Court added to Littlefield's estimate of assets \$417,215.70 which was credited to Virginia in the settlement with the United States in 1903 and gave West Virginia credit for  $23\frac{1}{2}$  of the \$14,929,161.44, amounting to. \$ 3,508,352.94

Less money and securities received by West Virginia from the Restored Government of Virginia and found by the Master as due Virginia..... \$ 541,467.76

Making the credits allowed W. Va..... \$ 2,966,885.18

$23\frac{1}{2}$  per cent. of Principal debt of \$30,563,861.56, was.. \$ 7,182,507.46

Deduct credits allowed West Virginia as above..... 2,966,885.18

Total principal due by West Virginia under the second decision of the Court on the merits of case..... \$ 4,215,622.28

Interest Jan. 1, 1861, to July 1, 1891, (4%)..... \$ 5,143,059.18

Interest July 1, 1891, to July 1, 1915, (3%)..... 3,035,248.04

Total interest .....

Principal as above .....

Making the total amount of the decree..... \$12,293,929.50

with interest from July 1, 1915, at five per cent.

(U. S. Reports, Vol. 238, page 242.)

Vc. After great delay and many efforts on the part of the plaintiff to bring West Virginia to a settlement, even to the extent of asking from the Supreme Court a mandamus against members of the West Virginia Legislature to compel them to provide for the payment of the judgment and thereby raising one of the most important questions ever raised before that great Court, the matter has been adjusted through the skill of the Virginia Commission and the good sense of the present West Virginia Government.

On the 1st day of April, 1919, the Extra Session of the West Virginia Legislature, called by Governor Cornwall of that state, passed the law for the settlement of the judgment of the Supreme Court.

That settlement in brief amounted to this:

Principal and interest of judgment.....	\$12,393,929.50
Interest from July 1, 1915, to Jan. 1, 1919.....	2,168,937.60
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Total principal and interest, January 1, 1919.....	\$14,562,867.10
to which is to be added $\frac{1}{2}$ cost of said suit when taxed and certified.	

To be settled as follows:

(a) Cash payment .....	\$ 1,062,867.16
with interest at 5% from Jan. 1, 1919, till payment.	
(b) West Virginia Bonds dated Jan. 1, 1919, bearing 3½ interest payable semi-annually, July 1, and Jan. 1, of each year, of the face value of.....	\$13,500,000.00
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	\$14,562,867.16

The Auditor of West Virginia was to draw his warrant upon the Treasurer of said state in favor of the Commonwealth of Virginia acting by and through its *Commission*, as constituted under the joint resolution of Virginia Legislature of March 6th, 1894, and of the Act of March 6th, 1900, "in respect to the settlement with West Virginia of the proportion of the public debt of the original state of Virginia to be borne by West Virginia or upon the order of said *Virginia Commission* for the above Cash payment and interest. The Treasurer upon presentation of such warrant to draw his check upon the Treas-

ury of the State of West Virginia" payable to the Commonwealth of Virginia acting by and through the said *Virginia Commission* or upon the order of the said *Commission*, out of any funds available for such purpose and deliver the said check to the Commonwealth of Virginia, acting by and through the *Virginia Commission* or upon the order of said *Commission* on or before September 1st, 1919, and take the proper receipt therefor—such check to constitute a credit upon the judgment rendered June 14, 1915, by the Supreme Court of the United States in favor of the Commonwealth of Virginia against the state of West Virginia.

Bonds to be issued for the said \$13,500,000 above mentioned to be engraved as soon as they may be after the act takes effect.

Coupon Bonds in denominations of.....	\$100	\$500	\$1,000
Registered Bonds in denominations of.....	\$100	\$500	\$1,000
	\$5,000	\$10,000.	

And to be dated January 1st, 1919, payable at the Treasurer's Office of West Virginia or at such Agency in the City of New York as may be designated by the state of West Virginia at the option of the holder, January 1st, 1839, with the right of the state to redeem any of said bonds at any time before maturity at par with accrued interest at the rate of 3½ per cent per annum from date—payable semi-annually, July 1st, and January 1st, of each year—and in case of coupons upon presentation and surrender of the same representing interest due. Principal and interest payable in gold coin of the U. S. at the present standard of weights and fineness. The bonds to be signed by the Treasurer and countersigned by the Auditor. The coupons to contain the signature of the Treasurer which may be engraved thereon.

The Auditor and Treasurer to issue and deliver coupon bonds to the aggregate number of face value of \$12,366,500 to the Commonwealth of Virginia acting by and through the said *Virginia Commission*, and shall take a proper receipt therefor which shall be in full discharge of the balance of the judgment aforesaid. the state of Virginia to file with the Board of Public Works of the said state of West Virginia a full and complete



itemized statement or list of Virginia Deferred Certificates which have been deposited with the Commonwealth of Virginia or subject to her control upon passage of this act.

The residue, called Reserve Bonds, of the face value of \$1,133,500, to be retained by the Board of Public Works of West Virginia to be held in escrow that the state of West Virginia may have the benefit of the distributive share in the proceeds of the judgment of such "Virginia Deferred Certificates" as may have been lost or destroyed; but the Board of Public Works shall deliver to the Commonwealth of Virginia acting by and through said *Virginia Commission* all said reserve bonds in excess of the amount necessary to exchange for Virginia Deferred Certificates which have not been certified as deposited with the Commonwealth of Virginia or are subject to her control at the time this act takes effect.

Such certificates aforesaid shall be accompanied by a copy of the statement of account of distribution fully and completely itemized showing the name of owner (if known) and the amount of each Virginia deferred certificate or claim legally entitled to participate in the proceeds of the judgment aforesaid together with an itemized list of owner and amount of all said deposited Virginia Deferred Certificates deposited with the said *Commission* or subject to its control, and entitled to share in the judgment aforesaid.

The purpose being that only such bonds shall be retained in escrow for exchange provided for hereafter as shall represent the distributive share of such Deferred Virginia Certificates in the fund arising from the settlement of the judgment aforesaid as shall not have been, at the time this act takes effect, deposited with said *Virginia Commission* or subject to its control.

Provision is made for fractional certificates exchangeable for Reserve Bonds when presented in sums of \$100, or multiples thereof.

On January 1st, 1939, such Reserve Bonds with interest coupons attached so uncalled for by the said *Virginia Commission* or authorized representatives of Virginia shall be conclusively presumed to have been lost or destroyed and be immediately cancelled.

West Virginia Bonds to be distributed over a period of 20 years, beginning with date of bond and ending with maturity.

One twentieth in amount of such fund each year to be applied in the Treasury of West Virginia to credit of the Sinking Fund, to be used annually to purchase bonds at a rate not above par and accrued interest. To be cancelled and record kept thereof.

Taxes to be laid by the Board of Public Works on all real and personal estate subject to taxation to pay interest on bonds and the principal of bonds to be purchased as aforesaid during the year. To be collected in the usual way and deposited to the credit of the Sinking Fund unless some other funds in the State Treasury in any fiscal year are sufficient. Provision is made for payment of interest by the Treasurer every six months.

Provision is made for printing the bonds and paying the costs.

The total issue of West Virginia Certificates (called also Virginia Deferred) at the time of the settlement act of West Virginia, April 1, 1919, is.....

Interest Bearing .....	\$16,978,917.40
Non-Interest Bearing .....	1,255,237.00
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	\$18,234,154.40

These certificates were issued as follows:

(1) Under Act of March 30, 1871, and Act of March 7, 1872 .....	\$15,281,970.47
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Interest Bearing .....	\$15,164,277.99
Non-Interest Bearing .....	117,692.48
	<hr/>
	\$15,281,970.47
Held by Commissioners of the Sinking Fund.....	2,026,429.49
By Literary Fund .....	552,079.29
	<hr/>
	\$ 2,578,518.78
	<hr/>
Leaving in the hands of the public.....	\$12,703,451.69
(2) Under act of March 28, 1879.....	565,258.87

Interest Bearing .....	\$ 495,565.54
Non-Interest Bearing .....	69,693.33
	<hr/>
	\$ 565,258.87
(3) Under Act Feb. 14, 1882.	
Interest Bearing .....	\$ 1,031,551.88
Non-Interest Bearing .....	744,051.60
	<hr/>
	\$ 1,775,603.48
Literary Fund holds.....	166,943.33
	<hr/>
Leaving in the hands of the public.....	\$12,703,451.69
(4) Under Act of Feb. 20, 1892.	
Interest Bearing .....	\$ 287,521.99
Non-Interest Bearing .....	323,799.59
	<hr/>
Leaving in the hands of the public.....	\$ 611,321.58
	<hr/>
Total in the hands of the public.....	\$15,488,692.29
Total held by Commissioners of the Sinking Fund....	2,026,439.49
Total held by the Literary Fund.....	719,022.62
	<hr/>
	\$18,234,154.40

On April 5th, 1919, of the \$15,488,692.29 spoken of as in the hands of the public, the Virginia Commissioners by the Brown Brothers depository held \$14,350,000 in round numbers, leaving something more than a million to be collected from the bonds retained by West Virginia or from the funds when received by the *Virginia Commission* as provided in act of settlement.

VIa. As to the Virginia School and College Certificates, the Supreme Court spoke of them as bonds held by Educational Institutions for which Virginia issued new obligations without deducting one third for West Virginia's share, and on which six per cent interest has been paid continuously, aggregating \$864,842.03 (238 U. S. Report, page 238).

Such Virginia Schools & College Certificates or rather bonds for which they were issued, from which West Virginia certificates had not been taken, amount to \$905,284.03. Whether West Virginia's payment is to be applied to 23½ of such

amount and of the interest paid through the years by Virginia is a question which might be argued. But the policy of it may be doubted. Virginia has issued for them non-transferable certificates of the total face value, and stands of course as assignee of those bonds.

#### *VII. The Benefits of Virginia Qua State.*

She has been allowed a credit of \$541,467.76.

She has removed from her good name the imputation of being a repudiator.

She has made the defendant who reported that Virginia owed her nearly \$500,000 pay four millions and more of principal and eight millions and more of interest with five per cent thereon from July 1st, 1915.

She has the satisfaction of seeing a former partner upon the judgment of a court restore at least a part of the assets of the original partnership and has had the same applied to the payment of partnership debts.

There may be other benefits besides those mentioned.

#### *VIII. How the Distribution Will Be Made.*

This will be done just as every fund is distributed when the debts are known, the expenses paid and the balance struck. It is a question of hard work but the record in the offices of the state are clear and accurate.

All honor to the Virginia Debt Commission; to the able state officials—the Governors, the Attorney-Generals, and the Legislatures that have accomplished this great work.